

<b>CARL C. CASON</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>T &amp; S TRUCKING CO., INC.</b>	)	
Respondent	)	Docket No. 1,020,985
	)	
AND	)	
	)	
<b>GREAT WEST CASUALTY CO.</b>	)	
Insurance Carrier	)	

But in a Preliminary Decision dated March 24, 2005, the ALJ noted that there did not appear to be any other likely cause for claimant's condition except his work. The decision further referred claimant to Dr. Lyle D. Ketchum for "examination and preparation of a plan for treatment." However, relying on the ALJ's comments at the preliminary hearing, the parties sent Dr. Ketchum a letter dated April 7, 2005, which directed the doctor to address the issue of causation for claimant's bilateral upper extremity complaints. Copies of the ALJ's March 24, 2005 Preliminary Decision as well as a transcript of the March 17, 2005 preliminary hearing were also sent to the doctor.

On July 14, 2005, Dr. Ketchum examined claimant and recommended decompression of the ulnar nerve on the left and the median nerves on both wrists. The only reference to causation in the letter to the ALJ was a sentence that noted: "You have determined this injury was more likely than not caused by his occupation at T&S Trucking."

Dr. Ketchum's report led to the respondent again requesting that Dr. Ketchum address the issue of causation. Ultimately, the ALJ on September 29, 2005, again contacted the doctor by letter and requested the doctor to reach his own conclusions regarding causation because the ALJ noted that his conclusions in the March 24, 2005 Preliminary Decision were only tentative. It appears, from a letter the doctor sent respondent's counsel, that the doctor thought the ALJ was requesting an impairment rating. On October 17, 2005, Dr. Ketchum wrote the ALJ and iterated claimant's need for surgery and provided a rating. The doctor did not address the issue of causation.

Apparently, the parties further discussed the matter with the ALJ on January 24, 2006, and on January 26, 2006, the ALJ issued a Preliminary Decision finding the claim compensable and authorizing Dr. Ketchum to provide the recommended surgery.

The respondent requests review of whether the accident arose out of and in the course of employment as well as whether the ALJ erred in granting temporary total disability compensation. The respondent further argues that temporary total disability benefits were not an issue at the preliminary hearing and respondent was not given the opportunity to present evidence on that issue.

Conversely, claimant argues the ALJ's Preliminary Decision should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Carl C. Cason is an 18-wheel truck driver for the respondent. Claimant described how he constantly used his hands, wrists and arms as he performed his job duties. He noted he drove with his left elbow on the ledge by the window which helps him control the steering wheel and turn signals. The left hand, fingers, thumb and wrist are holding the left side of the vibrating steering wheel. The right hand palm is rested on the gearshift which vibrates constantly. The claimant testified he drives on an average approximately 3,250 miles per a week. Before every trip, the claimant checks all of the 18-wheel tires using a tire thumper. The tire thumper weighs approximately five pounds and the claimant hits each tire twice. Claimant testified he gets in and out of his truck 30 times a day and also checks 3 hoses 5 or 6 times per a day. Every time the claimant picks up a new trailer, he has to crank the dollies up or down using both hands and wrists. Finally, claimant also detailed that he had to sign logs and other written documents as well as enter data into an

onboard computer in his truck. Claimant developed pain in both hands and numbness in the fingers. Claimant also has pain in his left elbow.

This case was complicated by the fact claimant sustained a left shoulder injury in December 2002. And as he received treatment for that condition his complaints about pain and numbness in his left elbow and bilateral wrists were not the primary concern of the physicians.

Claimant testified he was having problems with his arms while he was being treated for the rotator cuff injury. He testified to the following:

Q. Were you having these symptoms in your arms while you were off work from 2002 to 2003 treating for your shoulder?

A. Yes. Going through therapy and all I was still having problems, and when we was working through therapy I was telling the doctor, like I say, we were just hoping with the therapy itself that it would kind of help work the numbness and stuff out.<sup>1</sup>

Lori Borgan, respondent's safety director, testified to the following:

Q. Did Mr. Cason ever contact you and tell you he was having difficulties with his hands going numb or pain in his left elbow?

A. He talked about a problem with his left arm and I don't think he got into real specifics but maybe numbness in his hand and that was -- I don't know a date on that. I think it was summertime last year because he was riding his motorcycle so it was a nice day, and he came down and talked about it and that he still was working on the shoulder rehabilitation, I believe, and thought that it was associated with his shoulder was the impression I had.<sup>2</sup>

He returned to work for the respondent after treatment for his shoulder concluded on November 26, 2003. From November 26, 2003 through October 19, 2004, the claimant drove 82,411 miles.

Dr. P. Brent Koprivica opined the claimant's peripheral entrapment neuropathies are due to his truck driving activities. The doctor further opined the claimant's bilateral carpal tunnel syndromes as well as the cubital tunnel syndrome are causally related to the holding of the steering wheel. The doctor opined:

In my opinion, Mr. Cason's problems with peripheral entrapment neuropathies are work-related. I believe his truck driving activities and the holding of the steering

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<sup>1</sup> P.H. Trans. at 54-55.

<sup>2</sup> *Id.* at 89.

wheel in particular are a substantial factor in the development of bilateral carpal tunnel syndromes as well as cubital tunnel syndrome. I would recommend filing a separate claim for repetitive injury each and every day worked up until his last date of employment associated with the development of these conditions. I would not specifically relate them directly to the injury of December 9, 2002, with the history of progression on returning back to work and the noted involvement of the right upper extremity.<sup>3</sup>

In a letter dated December 28, 2004, Dr. E. Bruce Toby stated:

As stated previously I do not think that his neuropathies are due to his December 9, 2002 injury. I also do not think it likely that his cubital tunnel syndrome and bilateral carpal tunnel syndromes could be related to his truck driving unless there are some extenuating circumstances or something unusual about his driving habits. Although I certainly agree that Mr. Cason has some ulnar neuropathies, I do not think that these are work related unless there are some other circumstances that I do not know of.<sup>4</sup>

The claimant described his hand intensive work activities and Dr. Koprivica specifically opined those activities led to claimant developing bilateral carpal tunnel as well as cubital tunnel syndrome. The Board affirms the ALJ's determination those conditions were work-related.

Respondent next argues that the ALJ erred in awarding claimant temporary total disability compensation because that issue was not raised.

K.S.A. 44-534a authorizes an application for preliminary hearing to be filed on only the issues of furnishing medical treatment and payment of temporary total disability compensation. As a prerequisite to filing an application for preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. The notice of intent shall contain a specific statement of the benefit change being sought. The language contained in K.S.A. 44-534a is specific and unambiguous. The notice of intent letter served on the adverse party requesting medical compensation or temporary total disability benefits shall contain a specific statement of the benefit change sought. The ALJ's jurisdiction at a preliminary hearing is limited to deciding the question specified as a benefit change in the notice of intent letter.

A review of the administrative file shows that claimant's notice of intent letter to respondent, dated January 7, 2005, specifically requested surgery for claimant's bilateral carpal tunnel and left ulnar nerve conditions as well as temporary total disability benefits.

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<sup>3</sup> *Id.*, Cl. Ex. BB at 13.

<sup>4</sup> *Id.*, Resp. Ex. 1

This provided respondent notice claimant was seeking temporary total disability compensation in the event surgery was authorized. Accordingly, the Board finds the ALJ had the authority to order temporary total disability compensation because such request was specifically contained in claimant's notice of intent letter served upon the respondent.

Turning to the specific dates the ALJ awarded temporary total disability compensation, it must be noted that the Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an ALJ exceeded his or her jurisdiction.<sup>5</sup> This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>6</sup>

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>7</sup>

K.S.A. 44-534a specifically grants an ALJ the authority to decide at a preliminary hearing issues concerning the payment of temporary total disability compensation. Therefore, the ALJ did not exceed his jurisdiction. Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings.

**WHEREFORE**, it is the finding of the Board that respondent's appeal of the ordered temporary total disability compensation is dismissed and the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated January 26, 2006, is otherwise affirmed.

**IT IS SO ORDERED.**

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<sup>5</sup> K.S.A. 2004 Supp. 44-551.

<sup>6</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>7</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Dated this \_\_\_\_\_ day of April 2006.

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BOARD MEMBER

c: David C. Byerley, Attorney for Claimant  
Jeffrey D. Slattery, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director